ASSIGNMENT AND AMENDMENT TO FRANCHISE AGREEMENT

The Franchise Agreement dated July 31, 2003 between Liberty Tax Service and Kenya Whitaker pertaining to territory TX066 (DallasTX-6) is hereby amended as follows:

The name of the Franchisee is changed from Kenya Whitaker to Easy Software Solutions, LLC, a limited liability company. Kenya Whitaker shall remain the guarantor.

The Franchisee further hereby agrees on behalf of herself and all her employees, agents, successors, assigns and affiliates, to fully and finally release and forever discharge JTH Tax, Inc. d/b/a Liberty Tax Service and its past and present employees, directors, agents, assigns and affiliates, from any and all claims, actions, causes of action, demands, damages and costs, which could be asserted against such persons and entities or any of them up through and including the date of this Assignment and Amendment.

Except as modified above, the terms of the Franchise Agreements remain in full force and effect.

FRANCHISEE: Kenya Whitaker

By: ______________________
Kenya Whitaker

LIBERTY TAX SERVICE

By: ______________________
John Hewitt, CEO

Date: August 14, 2003

FRANCHISEE: Easy Software Solutions, LLC

By: ______________________
Kenya Whitaker, Managing Member

By: ______________________
Kenya Whitaker, Individually

Exhibit B

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE, Plaintiff,	§ § § §	
vs.	§ §	NO. 2:07cv170
KENYA WHITAKER Defendant.	§ §	

AFFIDAVIT OF KENYA WHITAKER IN SUPPORT OF MOTION TO TRANSFER OR TO STAY THE PROCEEDINGS

State of Texas §
§
County of Dallas §

BEFORE ME, the undersigned authority, on this day personally appeared Kenya Whitaker, who being by me duly sworn, deposed, and stated as follows:

1. My name is Kenya Whitaker. I am over 21 years of age and competent to make this affidavit. I make each one of these statements of my own personal knowledge, gained as a principal of Easy Software Solutions, LLC ("ESS") and in my personal dealings with Liberty Tax Service ("Liberty"). Each statement is true and correct.

2. In July 2003, Liberty and I entered into a franchise agreement, a true and correct copy of which is attached as Exhibit A to the motion to transfer. On August 14, 2003, ESS became the franchisee under the agreement and I remained liable only as a guarantor. A true and correct copy of that substitution is attached to the motion to transfer as Exhibit B.

3. Under the agreement, Liberty promised to provide "special marketing techniques and operating procedures to facilitate the provision of tax return preparation and related services." Exhibit A at 3. It also promised to provide or recommend a source for tax return preparation software as well as support for franchisee's preparation and use of such tax preparation software. *Id.* at 5, 6. In addition, Liberty promised to provide the ability to electronically file tax returns, a refund application loan program, advanced training, aid in obtaining needed supplies, and financing to franchisees. *Id.* at 6.

4. In fact, however, Liberty did not fully perform on its obligations under the agreement and ESS found that the software it was required to use actually hampered its business efforts rather than promoted them. For instance, in January, 2004, ESS began

operations as a Liberty franchise with a projection to file 800 individual tax returns. This projection was based on the understanding that Liberty would provide the promised corporate advertising support in the area of five percent (5%) of the marketing budget.

5. That support never materialized. Instead, it was ESS that spent significant amounts on marketing for sporting event promotions, radio advertisements, coupon distribution, parades, etc. in its attempt to generate additional business. Liberty never approved or provided any radio or television advertisements or other significant marketing support; indeed Liberty's "marketing support" consisted of taking out an ad in the Yellow Pages.

6. Indeed, Liberty actually undermined ESS's efforts by allowing another Liberty franchisee to prepare free returns in ESS's designated area. Despite bringing this problem to Liberty's attention, nothing was done to stop the marketing within the ESS territory until ESS threatened to sue for breach of contract for not supporting ESS as its franchisee.

7. In addition, in February 2004, Liberty began "intercepting" revenues destined for ESS. After much wrangling, Liberty finally told ESS that it had withheld sums due ESS and applied them toward a promissory note Liberty had encouraged ESS to sign for the balance of its franchise fee. Thereafter, ESS paid off that promissory note to avoid any further "fee intercepts."

8. And when ESS tried to expand and raise the stature and visibility of Liberty's business in the North Texas market, Liberty undermined those efforts. For instance, in July 2004, an ESS principal, R. Byron Whitaker, initiated conversations with Hunt Sports Group and the Dallas Burn regarding the possibility that Liberty would purchase the naming rights to the new MLS soccer stadium in Frisco, Texas, as well as their interest in investing in the development of Liberty franchises within the DFW Metroplex.

9. In August 2004, I was present when members from the Hunt Sports Group attended a Liberty Tax Service Open House for those interested in becoming franchisees.

10. Soon thereafter, I attended a meeting and presentation personally hosted by Lamar Hunt for Liberty representatives regarding the naming of the Frisco development for Liberty, as well as the plans by the Hunt Sports Group to invest in Liberty Tax Service as area developers for the DFW Metroplex. The presentatioh included a mock-up of the proposed center, presentation materials and an engraved pen for each of the attendees.

11. Instead of capitalizing on the incredible opportunity created by ESS, the Liberty representatives shamed and embarrassed myself and the other ESS principal in attendance. During the meeting, I personally heard Liberty official John Hewitt commented that the Hunt Sports Group audience "was not his target market" and that money "was made off of the poor." Mr. Hewitt left the meeting without even shaking anyone's hand or thanking them for the time and effort put into the presentation – and simply abandoned all of the materials prepared for him. The fallout from the actions of the Liberty representatives crippled ESS's ability to develop future business with the Hunt entities.

12. Then in September 2004, Liberty contacted ESS to urge ESS to expand and purchase additional territory in the DFW Metroplex. ESS declined that offer. Soon thereafter Liberty made a written offer for ESS to become its "area developer" for the DFW Metroplex; again the offer was declined.

13. Still, ESS continued to perform under its franchise agreement. Over the next two tax seasons (2005 and 2006), ESS prepared approximately 670 and 700 returns, respectively.

14. In September 2006, Liberty announced that ESS would be required to use a new "LibTax" software for the upcoming 2007 tax season. Moreover, Liberty announced it would no longer pay for even the yellow pages advertising as it had in previous years. But Liberty continued to require payment by ESS of the same percentage per return.

15. In October 2006, Liberty sent the new LibTax software for use on ESS's computers and offered a group training session for the new LibTax software. Significant problems with the new software required ESS to repeatedly seek technical support from Liberty, and again support was either slow or not forthcoming.

16. In January 2007, a Liberty representative visited the ESS office unannounced to perform an "operational review." Despite the surprise nature of the visit, no issues with the front or back office or marketing materials were noted.

17. The problems with the new LibTax software continued into the 2007 tax season, crippling ESS's revenues. ESS had to notify Liberty of problems with validation errors when processing Pay Stub Loans, "bank reject errors" that arose using the software, various "unknown errors" which popped up when returns were loaded, and timeliness issues with a customer's excise tax credits when using LibTax – a problem that resulted in the customer choosing to have their return prepared elsewhere and attendant loss of revenue and future business. Responses from Liberty showed that it was receiving similar complaints at its national office regarding the new LibTax software.

18. In February, 2007, a second unannounced review of the ESS offices was conducted by Liberty. The Liberty agent, Geoff Knapp, was overtly hostile and unprofessional as he demanded to see individual files of tax returns. When I refused to disclose that information based on Knapp's threatening manner and the absence of my business partner, Knapp left – all the while demanding that I show him the files or the franchise agreement would be terminated. Indeed, Knapp was so unprofessional and threatening that an ESS customer – taken aback by Knapp's actions – asked if I was all right after the harassment I had received from Knapp. Ultimately, the customer left ESS without even completing his purpose for coming into the office.

19. When Knapp later called the ESS office and again demanded that I show him the files, he was told that his loud and disrespectful mannerisms in front of the ESS tax preparers and customers would not be tolerated, but that I would arrange a meeting with him once my business partner was available to attend.

20. When Liberty's representative from its national headquarters later called, I repeated my unwillingness to allow Mr. Knapp to abuse myself and the ESS tax preparers, but

that the files would be available to anyone who was civil and professional during their visit.

21. I know that the second principal of ESS, R. Byron Whitaker, followed up with an email invitation to Knapp asking to schedule a meeting to resolve the issues created by Knapp's actions. ESS received no response to this entreaty from either Knapp or Liberty's corporate headquarters.

22. Instead, ESS received a letter from Liberty terminating its franchise agreement. ESS accepted that termination in writing, sent Liberty a cashier's check for payment of all outstanding amounts due to Liberty, and returned to Liberty all its files via overnight delivery.

23. Thereafter, Liberty interfered with ESS's business by contacting and telling an ESS customer that she should not do business with R. Byron Whitaker or his office.

24. In April 2007, Liberty sued me, individually, in this action for breach of the franchise agreement as well as an alleged violation of Liberty's trademark based on the actions of an ESS preparer – not me.

25. To my knowledge, ESS has paid off any and all amounts owed Liberty.

26. Because the events underlying the disputes between Liberty, me, and ESS, as well as the important witnesses to be called regarding those claims, are located in and around Dallas, Texas, ESS and I have filed an action in the Northern District of Texas against Liberty.

27. I am an individual citizen and resident of the Northern District of Texas.

28. ESS is a Texas Limited Liability Company with its principal place of business in the Northern District of Texas.

29. I have no significant contacts with the Eastern District of Virginia, and ESS has no offices, employees, or facilities here.

30. All of the alleged breaches or violations of trademark laws included in Liberty's original complaint occurred within the Northern District of Texas and all significant witnesses and important documents regarding those claims and the claims against Liberty by ESS also lie there.

31. The ESS principals, myself and R. Byron Whitaker will testify how Liberty did not perform on its obligations under the franchise agreement, and how the software ESS was required to use actually hampered its business efforts rather than promoted them. We will also testify regarding their efforts to raise the stature and visibility of Liberty's business in the North Texas market through the Hunt Sports Group and how Liberty undermined ESS's business by allowing another Liberty franchisee to prepare free returns in ESS's designated area. I would be inconvenienced by having to litigate these issues in Virginia rather than in the action already on file in Texas.

32. Ryan Gipson, John Alper, and John Waggoner reside in the Northern District of Texas and were present at the meeting involving Liberty and the Hunt Sports Group where the Liberty representatives shamed and embarrassed the ESS principals in attendance, and were witnesses to the comment by John Hewitt that the Hunt Sports

Group audience "was not his target market" and that money 'was made off of the poor."

33. Johnny Washington, the franchisee whom Liberty allowed to prepare free returns in ESS's designated area is located in the Northern District of Texas.

34. Diana West and Teressa Raiford, ESS tax preparers who will testify about the significant problems experienced with the new LibTax software and the repeated need to seek technical support from Liberty – and how it was slow or not forthcoming – reside in the Northern District of Texas.

35. Audie Medrano and LaTonya Berry, ESS tax preparers who were present when Liberty's agent, Geoff Knapp, made his hostile and unprofessional visits to ESS and threatened me, demanding that I immediately show him all ESS's files or the Liberty franchise agreement would be terminated, reside in the Northern District of Texas.

36. Kirby Brown, the ESS customer who witnesses Knapp's tirade and asked if I was all right after he left, resides in the Northern District of Texas.

37. Margaretta Farmer resides in the Northern District of Texas and will testify Liberty directly interfered with ESS's business by contacting her and telling her that at she should not do business with the ESS principal, R. Byron Whitaker, or his office.

38. ESS and I are both located in Texas and lack the financial resources to defend the action in Virginia.

Further affiant sayeth not.

Kenya Whitaker

SWORN TO AND SUBSCRIBED before me, the undersigned, this _____ day of May, 2007.

Notary Public, State of Texas

Donya Folco
Notary Public, State of Texas
My Commission Expires:
August 9, 2010